

REMARKS

Claims 1-39 remain pending in the application.

Claims 1-39 over an Aether Confidential Reference

In the Office Action, claims 1-39 were rejected under 35 U.S.C. §102(b) as allegedly being anticipated by Aether Technologies confidential copy of “Enterprise Data Wireless Center” (“Aether Confidential Reference”). The Applicants respectfully traverse the rejection.

The Examiner cites the Aether Confidential Reference as being a single reference. However, there are in fact two documents within the Examiner’s Aether Confidential Reference. The first document of the Examiner’s Aether Confidential Reference is Enterprise Data Wireless Center, A Complete Methodology to Enable Your Wireless Data Solution, pages 1-15, dated February 1999. The second document of the Examiner Aether Confidential Reference is AIM.net Architecture Version 1.1, pages 1-75, dated April 12, 1999. As the Examiner can see, these two document were produced within different months. The Examiner’s rejection is based on the AIM.net Architecture Version 1.1 document.

The Examiner indicated the Affidavit submitted November 16, 2004 is insufficient to overcome the pending rejection of claims 1-55 because the phrase “it is my belief” does not offer substantial proof that the prior art is actually meant to be a confidential document (See Advisory Action dated January 19, 2005).

To cure the alleged deficiency in the Affidavit filed November 16, 2004, the Applicants are submitting herein a new Affidavit supporting the Applicants’ previous contention that the AIM.net Architecture Version 1.1 document was **not** intended for distribution outside of Aether (as supported by the statement on page 6 of the document itself).

Thus, the AIM.net Architecture Version 1.1 document was not “published” for public disclosure and does not qualify as prior art under 35 U.S.C. § 102(b). Because this rejection is not based on prior art, it cannot properly stand. The Applicants respectfully request the rejection of claims 1-39 be withdrawn.

Conclusion

All objections and rejections having been addressed, it is respectfully submitted that the subject application is in condition for allowance and a Notice to that effect is earnestly solicited.

Respectfully submitted,



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